

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2015-077-00910R

Parcel No. 320/04116-520-001

Stephen A. Lipovac,
Appellant,

v.

Polk County Board of Review,
Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on June 23, 2016. Stephen A. Lipovac was self-represented. Assistant Polk County Attorney Mark Taylor represented the Polk County Board of Review.

4628 Westwood Drive Trust is the owner of a residential, split-level dwelling located at 4628 Westwood Drive, West Des Moines. It was built in 1990 and has 1464 square feet of above-grade finish. It also has a 384 square-foot unfinished basement, a deck, and a two-car attached garage. The site is 0.143 acres. (Ex. A).

The property's January 1, 2015, assessment was \$176,200, allocated as \$34,500 in land value, and \$141,700 in improvement value. On his protest to the Board of Review, Lipovac claimed the assessment was not equitable as compared with assessments of other like property under Iowa Code section 441.37(1)(a)(1)(a).

The Board of Review denied the petition. Lipovac then appealed to PAAB.

Findings of Fact

Lipovac explained that the subject property is a rental and as a result, typically has a higher level of wear and tear than owner-occupied properties. In response to this concern, Director of Litigation Amy Rasmussen explained that a variety of factors are considered in determining a property's condition, such as building permits, questionnaires to the buyers and sellers when a property transfers, and attempts are made to inspect properties during assessment cycles. She concedes that not all properties are inspected on an annual basis, but that the Assessor's Office tries to inspect properties when they can.

Lipovac submitted three properties he believes support his claim. (Exs. C & D). In Lipovac's opinion, submitting these comparable properties, which he believes are similarly situated and have lower assessments than his, demonstrates his property assessed inequitably. The Board of Review submitted five properties it relied on in its decision. (Ex. F & G).

There is no indication that any of the comparable properties recently sold, and no evidence was offered of their market value. Moreover, Lipovac did not submit any evidence of the fair market value of his property, such as a sale, an appraisal, comparable sales adjusted for differences, or a cost analysis.

The following chart summarizes the equity comparables submitted by both Lipovac and the Board of Review. (Ex. C & F).

	2015 Total Assessed Value	Gross Living Area (GLA)	Grade	AV/SF
Subject	\$176,200	1464	4+10	\$120.36
613 55th St	\$160,300	1580	4+05	\$101.46
601 55th St	\$162,300	1580	4+05	\$102.72
601 Prairie View Dr	\$164,500	1452	4+10	\$113.29
5029 Wistful Vista Dr	\$180,100	1451	4+10	\$124.12
4743 Meadow Valley Dr	\$190,400	1464	4+10	\$130.05
4804 Westwood Dr	\$179,900	1504	4+10	\$119.61
4716 Tamara Ln	\$181,800	1464	4+10	\$124.18
4812 Tamara Ln	\$184,600	1464	4+10	\$126.09

All of the properties are similar in style, age, size, and general grade (quality) to the subject property. However, the three properties submitted by Lipovac are located outside of the subject's immediate neighborhood, north of EP True Parkway and west of Interstate 35, two main thoroughfares. (Ex. E). The Board of Review's comparable properties are located in closer proximity to the subject property, either on the same block or within two blocks. (Ex. H). In Lipovac's opinion, his comparable properties are very similar to his property and he does not believe the differences in neighborhoods are significant.

Rasmussen testified about the differences between the subject improvements cost analysis (Ex. B) and the cost analysis of Lipovac's comparable improvements (Ex. D), which result in variances between the assessments. As an example, she notes the property located at 613 55th Street has a slightly lower grade, one less bath area, and no deck as compared with the subject. These differences will result in a slightly lower assessment of the improvements compared to the subject property.

Moreover, Rasmussen explained that the properties submitted by Lipovac are located in a different neighborhood affected by different influences, which affect the cost analysis. For instance, the subject's neighborhood factor is 1.00, (Ex. B), which results in no adjustment to the cost estimates. However, 613 55th Street has a neighborhood factor of 0.896 (Ex. D), which is effectively a negative 11% adjustment to the cost estimates, resulting in a lower adjusted value.

While all of the comparable improvements are generally similar to the subject, we conclude that the comparable properties submitted by Lipovac are in a different neighborhood that affects the market values. Whereas, the Board's comparable properties are more proximate to the subject property and as a result have similar market influences. Accordingly, we would expect the subject's total assessment to fall within the range of the comparables' assessments submitted by the Board. Indeed, the evidence indicates this to be the case. The assessed value per-square-foot of the Board's five properties ranges between \$119.61 and \$126.09, with an average of \$124.81. The subject's assessed value per-square-foot is at the lower end of this range and less than the average.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); see also *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

A taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

"(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination."

Id. at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

Lipovac contends that he has offered the assessments of three comparable properties that show the subject property is inequitably assessed. Under *Maxwell*, a mere showing of a difference in assessments is not sufficient to establish inequity. Lipovac did not submit an opinion of the subject's actual, fair market value. Further, none of the comparable properties recently sold and no evidence was offered of their actual value. As a result, the *Maxwell* analysis cannot be completed and Lipovac's claim must necessarily fail. Moreover, the comparables offered are located in a different neighborhood than the subject property, which affects their market values. The Board of Review's comparables are more proximate to the subject and indicate the subject's assessment is equitable.

Lipovac also asserted his property is inferior in condition because it is a rental and not as well cared-for as an owner-occupied property. This argument is more akin to a market value or error claim under Iowa Code section 441.37(1)(a)(1(b, d) and is not properly before this Board. Even if it were, aside from generalized statements, Lipovac did not provide any evidence of the subject's actual condition or how that condition affects its market value. If Lipovac believes the property is incorrectly listed, we suggest he contact the Assessor's Office to request an interior inspection for future assessment cycles.

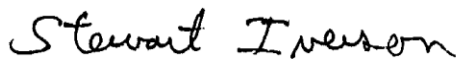
Order

IT IS THEREFORE ORDERED that the Polk County Board of Review's action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

Copies to:

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Mark Taylor